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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

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NO. 6583

DIANE DANIEL, APPELLANT

v.

WALTER R. COLLIER, APPELLEE

ANSWER TO MOTION TO DISMISS OR
AFFIRM JUDGMENT OF MICHIGAN COURT
OF APPEALS

SUPPLEMENTAL
JURISDICTIONAL STATEMENT

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THE QUESTION IS SUBSTANTIAL

The issue involved in this case is to determine if the state interest of "preventing stale and fraudulent claims" is SUBSTANTIALLY RELATED TO THE PURPOSE OR OBJECTIVE FOR WHICH THE PATERNITY ACT WAS ENACTED, Weber v. Aetna Cas. and Surety Co., 406 U.S. 164, 31 L.Ed (2d) 768 at 777, (1972); Jimenez v. Weinberger 417 U.S. 628, 41 L. Ed(2d) 363, (1974); U.S. v. Clark 445 U.S. 723 (1980) at 27.

Mere incantation or recital of a state interest without showing a compelling and substantial interest to the purpose the statute sought to achieve is not enough, Matthews v. Lucas 427 U.S. 495 (1976); Trimble v. Gordon, 430 U.S. 762, 52 L.Ed (2d) 31 (1977).

Clearly Paternity Acts were enacted to serve the public need to have children born out of wedlock to have court-enforceable rights to paternal child support denied them at Common Law while children born in wedlock had such rights for their entire minorities, Gomez v. Perez 409.U.S. 535, 35 L. Ed (2d) 56(1973; and to prevent such children from becoming public charges to be supported by taxpayers and public at large through welfare benefits from tax revenues; Mills v. Habluetzel, ____ U.S._____, 71 L.Ed (2d) 770 (1982),

Michigan public policy in treatment of children born in and out of wedlock is stated in Whybra v. Gustafson 365 Mich 396 (1961):

"Patently, these provisions seek to express society's concern with support and education of the "child born out of wedlock". IN TERMS OF NEED FOR SUPPORT AND EDUCATION, WE SEE NO DIFFERENCE BETWEEN CHILDREN BORN IN AND OUT OF WEDLOCK. There is no such thing as a 35% child, There is no justification in the statute for an arbitrary rule which limits support from the natural father to 35% of that which might be ordered in a divorce proceedings, or which terminates his obligation to the child in 5 years."
365 Mich. 396, at 400 (Emphasis Added)

In Boyles v. Brown, 69 Mich App 480 (1976) the Court stated:

"Relevant case law further belies the trial court's belief that equality of treatment between legitimate and illegitimate children is contrary to public policy. In Whybra v. Gustafson 365 Mich 396 (1961) our Supreme Court announced a public policy of this state to treat children born out of wedlock as no less deserving of support than those children born in wedlock. The Court stated that, "In terms of need for support and education, we see no difference between childrer born in and out of wedlock." Id.400. (Emphasis supplied)

Limiting the length of time that paternal child support to first six years by a limitation period for child born out of wedlock does not serve to cure the problem of preventing illicit pre-marital liasions and clearly self-defeats the objective of providing child support to innocent children, who had no choice or hand in their being born, their court enforceable fundamental right to life and enjoyment thereof - the legislative purpose of enactment for the best interests of the minor, as well as public policy to give all children the opportunity to use the Courts to secure and enforce such rights.

The personal fundamental right of child support requires heightened and special scrutiny by this Court, Weber v. Aetna; Jimenez v. Weinberger, cited above.

Paternal child support belongs to the child as the name implies, the field of law covers, and the intent and purpose of Paternity Acts. All children need paternal support for their entire minority and the opportunity to obtain same. To limit the time that the Court door must stay open should be the same. Limitations of actions should not be counteranced for 1 year, 2 years, or even the 6 years as it defeats and purpose of the law, and fundamental personal right of child paternal support.

Mills and Pickett Cases held that opportunity limited to 1/18 and 1/9th respectively of the minority of children born out of wedlock to obtain paternal support rights in Court violated the 14th Amendment Equal Protection of Law. The Michigan Act limits the time to 1/3 of such minority is likewise not substantially related to the objectives sought by legislation. Gomez v. Perez (cited above) granted all children the right to paternal child support in the Courts requiring children born out of wedlock to have said right (formerly denied them at Common law). The holding and right itself implicitly requires that the duration of such right and the time the Court door is open to obtain such right likewise be the same for both legitimate and illegitimate children.

To limit the legitimate to a specific period less than the entire minority to obtain the Court enforceable right as that given legitimate is violative of 14th Amendment under the Gomez v. Perez reasoning of this Court.

In Mills the J. Rehnquist opinion seemed to imply that the period of 1 year was unreasonable, not making it unequivocally clear that unequal treatment of illegimates was violative of 14th Amend. not substantially related to statutory purpose of enactment.

Reasonableness of time is directed more to fundamental fairness and due process considerations. All laws must be reasonable. In a challenge under equal protection of law the reasonableness of time MUST BE EQUAL TO ALL CHILDREN. No child was responsible for its birth whether legitimate or illegitimate. The need for paternal support is the same in both groups. The duration of that fundamental personal right should likewise be the same. The court enforceable right or Court door remain open for the same period of time. There is no real substantial or compelling state need to treat children differentially as to the duration of their paternal support needs, and opportunity of the child to obtain such need.

No challenge is being made in this appeal to:

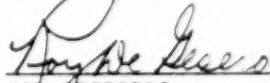
- (1) The general statute of limitations to causes of action of adult non-disabled litigants as to the reasonableness thereof or time limits thereof.
- (2) The "presumption of legitimacy afforded legitimate children (born in wedlock)
- (3) The rules of evidence that require different burdens of proof in Paternity Cases from that applied in other support actions.

CONCLUSION

A federal substantial constitutional question challenging limitations periods in paternity statutes is raised by this Appeal. Appellant prays that this Honorable Court note this appeal for probable jurisdiction to reverse the Michigan Court of Appeals Decision holding the 6 year limitation period not violative of the Equal Protect of Law under the 14th Amendment to the United States Constitution.

July 29, 1983

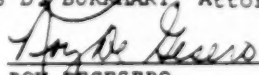
All of which is most respectfully submitted.



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CERTIFICATE OF SERVICE

The foregoing hereby certifies that a true and correct copy of the foregoing Jurisdictional Statement was placed in the United States mail on this 29th day of July, A. D. 1982, duly sealed, postage prepaid, first class and addressed to Counsel for Defendant-Appellee, Attorney of Record, JEROME E. BURNS, Attorney P.C. 4371 State Street, Saginaw, Michigan, 48602, Attention: THOMAS D. BURKHART, Attorney.



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